



Association of Women Solicitors

Essential for Success

www.womensolicitors.org.uk

Response to Legal Services Board Consultation -Enhancing consumer protection, reducing regulatory restrictions: will writing, probate and estate administration activities.

About the Association of Women Solicitors

The Association of Women Solicitors was established in 1923 a year after the first woman, Carrie Morrison, was admitted as a solicitor. The Association will therefore be 90 years old in 2013. It is a Recognised Group of The Law Society and has a current membership of over 18000 qualified and trainee women solicitors.

The Association's aim is to be an essential network promoting the potential and success of every woman solicitor at all stages of her career offering support and advice and representing the diverse interests of its members.

Response to Legal Services Board Consultation on Will Writing, Probate and Estate Administration.

Q1. Are you aware of any further evidence that we should review?

No. We consider the research to be sufficiently thorough and wide ranging.

Q2. Could general consumer protections and/or other alternatives to mandatory legal services regulation play a more significant role in protecting consumers against the identified detriments? If so, how?

No. General consumer protection is not sufficient. The current mandatory regulatory requirements for solicitors should be standard across the whole sector of provision of these services. There is a particular need for high level regulation of non solicitor providers here due to the information asymmetry of the consumer and provider, the risk of great adverse impact to the consumer if the protection is insufficient and the special non client relationship of the consumer to the provider.

Q3. Do you agree with the list of core regulatory functions we believe are needed to protect consumers of will writing, probate and estate administration services? Do you think that any of the features are not required on a mandatory basis or that additional features are necessary?

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We agree the list of core regulatory features. All should be mandatory throughout the process from initial instruction by the testator to the final distribution of the estate.

Q4. Do you believe that a fit and proper person test should be required for individuals within an authorised provider that is named as executor or attorney on behalf of an organisation administering an estate?

No. We believe that, provided the entity is fully regulated as recommended above, and the entity owner is certified as a fit and proper person there is no need to specifically authorise paralegals etc. Publicity for non solicitor individuals who have been found not suitable should be the same as for solicitors who have been struck off or otherwise disciplined.

Q5 What combination of financial protection tools do you believe would proportionately protect consumers in these markets and why? Do you think that mechanisms for holding client money away from individual firms could be developed and if so how?

ABS and other new entrants to the regulated market should be required to provide exactly the same financial protection (separate client account, compulsory professional indemnity insurance etc) as solicitors.

We do not think that mechanisms for holding client money away from entities is either workable or desirable. Under the existing arrangements client money is already held by a third party, the Bank, under its own regulation and we see no need to extend this to involvement of a fourth party under yet another set of regulations.

Q6. Do you agree that education and training requirements should be tailored to the work undertaken and risks presented by different providers and if so how do you think that would work in practice?

Yes but every non legally qualified individual should be supervised by someone who is fully legally qualified. Non solicitor individuals should be required to apply for accreditation schemes such as exist for Police Station Representatives for example, provided such schemes include independent assessment and do not simply take account of existing volume of work to the detriment of competent individuals who work part time or have taken maternity leave. This required accreditation should be in addition to the existing voluntary options such as membership of the Society of Trust and Estate Practitioners.

Q7. Do you agree with the activities that we propose should be reserved legal activities? Do you think that separate reviews are warranted of the regulation of legal activities relating to powers of attorney and/or trusts?

We agree that the proposed activities should include powers of attorney and trusts ancillary to will writing and estate administration. We do not consider that separate reviews are warranted in respect of powers of attorney and trusts. For the avoidance of doubt the reserved activity “drafting a will” should include the situation where advice is given but the client decides for whatever reason not to make or change an existing will.

Q8. Do you agree with our proposed approach for regulation in relation to “do it yourself” tools and tools used by providers to deliver their services? If not what approach do you think should be taken and why?

We agree absolutely that this is the right approach.

Q9. Do you envisage any specific issues relating to regulatory overlap and/or regulatory conflict if will writing and estate administration were made reserved activities? What suggestions do you have to overcome these issues?

Ideally we would like to see one comprehensive system of accreditation, compliance and control across the sector.

Q10. Do you agree that the s.190 provision should be extended to explicitly cover authorised persons in relation to estate administration activities as well as probate activities following any extension to the list of reserved legal activities to the wider administration of the estate? What do you think that the benefits and risks would be?

Yes, subject to the existing exceptions relating to wills. The benefits and risks are as stated.

Q11 Do you have any comments on our draft impact assessment, published alongside this document, and in particular the likely impact on affected providers?

Yes.

There could be a disproportionate effect on small solicitor entities. The bulk of the work in this sector is currently undertaken by women in these small firms who are already under fierce competition from large new entrants such as Co-operative legal services. When introducing regulation for non solicitors account must be taken of a possible adverse impact on existing regulated providers.

We support the suggestion that non solicitors should be required to lodge wills at the Probate service store.

We are disappointed that there is no full Equality Impact Assessment at this stage.

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